K

19 47 **File No.** O. Khoti/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Khoti Settlement Act, 1880

P.S.
E

File No. O. Khoti/47

Stl. Sectt. Slip 24 B e.

341-A

K

CONTENTS

Legal Department file No....O.Khoti/47.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions under the Khoti Settlement, Act, 1880	
1	O.No.4379 30.4.1947	Sections 24 and 39 (c) - Whether after coming into force of Khoti Settlement (Amendment) Act, 1946, Kubulayats can be taken in the old form which was in use prior to the passing of the Act	1-2
2.	O.No.8008 16.5.1947	The Bombay Land Revenue Code, section 135- L(2)- whether the tenant is barred by limitation from asking at this stage for a revision of the rights given to a khot in the Record of Rights in 1930 and if so, whether fresh enquiry will be legal.	3-6

14-5-56

It is not known why security was taken from a Managing Khot. If such securities were taken in the past to ensure payment to Government only of the assessment which the Khot was recovering from the privileged occupants, it would not be now necessary so to do, since by virtue of sections 2 and 12 of the Bombay Act XXIX of 1946 the managing Khot is relieved of the liability to collect for Government the assessment from the privilged occupants. If , however, security is needed also for the payment of jama as now defined by the amended section 24, the bond would be necessary, since under section 39(c) as amended the Khot is still primarily responsible in respect of jama.

Sd/-29.4.47
Remembrancer of legal Affairs.

U.R. to R.D. No.4379 dated the 30th April 1947.

Office of the R.L.A.

The facts as can be gleaned from the memorial made by the petitioner Bhagwan Damodar Gujarm of Mahad are as follows:-

Certain landsin the Khoti village of Mandale in Mahad Taluka are the petitioner's ancestral lands. They were purchased by his father and uncle long before the introduction of Record of Rights in Khoti Villages in Mahad Taluka. Most of these lands were originally Dhara landsliable to pay assessment only and the rest were Khoti-nisbat lands paying Dhara and Khot 's Faida. Owing to family disputes following the death of his elder brother in 1925 he wasunfortunately unable to get the documents supporting his claim - to these lands at the time of the introduction of Record of Rights. He was not a Khoti sharer and therefore these lands were at the Hissa Survey in 1930 wrongly entered in the Record of Rights in the Khata of Khotnisbat Padit lands. The petitioner was however in possession of these lands through the tenants and used to pay assessment. After he got his title deeds he applied on 11.1.19 to the Collector of Kolaba requesting the correction of the Record o Rights by entering in his Khata these lands as Dhara and Khotnisbat lands and in support of his claim he produced all the necessary documents in his possession. The Collector rejected his application whereupon he appealed to the Commissioner who directed him to apply to Government in rivision. Accordingly the present petition is made to Government.

The Commissioner suggests that the Collector may be asked to decide the applicant's claim after holding a fresh inquiry, if necessary. Remembrancer of Legal

Affairs is requested to advise whether the applicant is barred by limitation from asking at this stage for a revision of the rights given to the Khot in the Record of Rights in 1930 and if so, whether a fresh enquiry would be legal.

Section 135-L(2) of the Bombay Land Revenue Code provides;-

"The correctness of the entries in the Record of Rights and register of mutations shall be inquired into and the particulars thereof revised, by such revenue officers and in such manner and to such extent and subject to such appeal as the Provincial Government may from time to time by rules prescribed in this behalf."

The Rules framed by Government in respect of the Record of Rights are contained in Chapter XV of the Bombay land Revenue Rules. Under sub-rule (5) of rule 108 in that Chapter and appeal can lie to the Collector against an order made by the Superintendent of Land Records etc., within sixty days: and subject to the provisions of sub-rule (6) the decision of the appellate authority shall be final and there shall be no appeal against the order of the Collector Under sub-rule (6) the revisional powers vest in Government. There is no limitation prescribed for the exercise of the revisional powers of Government. Consequently it would be in Law competent for Government to call for and examine the record of the enquiry or proceedings in the present case for the purpose of satisfying itself as to the regularity of those proceedings and as to the legality or propriety of the decision or order passedin those proceedings and to pass order thereon as it deems fit modifying, annulling or reversing the order passedby the Subordinate Revenue Officer. However, in casesof abnormal delay the revisional powers of

Government have to be sparingly used. The petitioner seeks to re-open a mutation made 15 years ago. His petition shows that the claim underlying his present request was not countenanced by a Civil Court. The other Khoti sharers are to say the least non-committal in their attitude. The reason given for continued inaction for 15 years is not convinci.g. The entry has only presumptive value. The effect of revising the entry may be to drive the persons affected to a Court of Law. In these circumstancesit is a matter for Government's consideration whether the petitioner should not himself be referred to a Court of Law rather than be allowed to take benefit of his own laches.

Sd/-15.5.1947
Remembrancer of Legal Affairs.

U.R. to R.D., No.5002 dated the 16th May 1947.